

Message Text

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ACTION IO-13

INFO OCT-01 EUR-12 ISO-00 IOE-00 EB-08 AID-05 SS-15 L-03
COME-00 LAB-04 TRSE-00 SIL-01 AF-08 ARA-06 EA-07
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INRE-00 FRB-03 OPIC-03 SP-02 OMB-01 USIE-00 /115 W
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C O N F I D E N T I A L VIENNA 2034

FOR NORRIS, SCHWEBEL, AND POOLE

EO 11652: GDS
TAGS: UNIDO, EIND, OCON, PORC
SUBJ: IGC-V, REPORT NO. 3, ON PREAMBLE AND ARTICLES 1 AND 2:
APPARENT G-77 LIMITS OF COMPROMISE

REF: (A) STATE 49072, (B) VIENNA 1989

1. SUMMARY: AT CONCLUSION OF FIRST WEEK IT APPEARS
THAT G-77 HAVE TWO ISSUES WITHIN PREAMBLE AND ARTICLE 2
WHICH THEY VIEW MUCH AS THE U.S. VIEWS ITS OWN BREAKING
POINT ISSUES, I.E., TWO ISSUES WITH MINIMUM G-77 POSITIONS
WHICH THEY WOULD CARRY TO A PLENIPOTENTIARY MEETING
RATHER THAN CONCEDE AT FIFTH SESSION OF INTER-GOVERNMENTAL
COMMITTEE OF WHOLE TO DRAW UP A CONSTITUTION FOR UNIDO
AS A SPECIALIZED AGENCY (IGC-V). CHAIRMAN OF AD HOC
DRAFTING GROUP (PANAMA AMB) STATED FROM CHAIR THAT INSISTENCE
ON LINK BETWEEN PREAMBLE AND BODY OF CONSTITUTION WOULD BE
CARRIED TO PLENIPOTENTIARY IF NECESSARY. BRAZIL DEL
SAID SAME CONCERNING USE OF THE WORD "PRINCIPLES" IN
RELATION TO THE HISTORICAL DOCUMENTS LISTED
IN PREAMBULAR PARA. 3. THUS THE LINK AND THE WORD
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"PRINCIPLES"--RATHER THAN THE REFERENCE TO A NEW
INTERNATIONAL ECONOMIC ORDER (NIEO) IN ARTICLE 1 AS
ANTICIPATED WHEN THE U.S. STRATEGY PAPER WAS BEING
PREPARED -- MAY THUS BECOME THE AREAS WHERE A QUICK
USG DECISION WOULD BE REQUIRED IF, WHEN THE WHOLE
IGC-V NEGOTIATING SITUATION IS CLARIFIED, IT IS JUDGED
DESIRABLE TO AVOID CONSIDERATION OF THE NIEO ISSUE

AT PLENIPOTENTIARY LEVEL. PRELIMINARY DEPT. GUIDANCE IS REQUESTED BY MARCH 18 ON POSSIBLE TEXTS FOR PREAMBULAR PARAS 3 AND 10 QUOTED BELOW. ALSO, FURTHER RATIONALE EXPLAINING LEGAL DIFFERENCE BETWEEN REFERENCES IN PREAMBLE AND IN BODY WOULD BE HELPFUL TO USDEL IN STANDING FIRM AGAINST LINK BETWEEN PREAMBLE AND BODY WHILE APPEARING TO BE REASONABLE. END SUMMARY.

2. THE ISSUE OF PRINCIPLES APPEARS IN PREAMBULAR PARAGRAPHS (3) AND (10) AND ARTICLE 2 CHAPEAU. THE ISSUE OF LINKAGE APPEARS IN THE ARTICLE 2 CHAPEAU AND ARTICLE 2 SUBPARA (T).

3. ARTICLE 2 CHAPEAU. DEPT. WILL NOTE FROM REFTEL B, PARA 3 THAT AUSTRIAN, FRG, AND POSSIBLY OTHER GROUP B DELS HAVE CONSIDERED ACCEPTANCE OF SIMILAR LANGUAGE IN ARTICLE 2 CHAPEAU TO LANGUAGE U.S. WAS CONSIDERING IN ARTICLE 1 FOR THE SAME PURPOSE, I.E., AS A DEEP FALLBACK TO AVOID TAKING THE NIEO ISSUE TO PLENIPOTENTIARY. AS STATED IN REFTEL B PARA 3 US DEL AND DOES NOT ADVOCATE EMPHATICALLY REJECTED HERE NOW TO DEPT. ANY SUCH DRASTIC CHANGE IN NIEO BREAKING POINT CONTAINED IN US IGC-V STRATEGY PAPER.

4. PREAMBULAR PARAGRAPH 3. THE GROUP B OFFER OF COMPROMISE LANGUAGE FOR PREAMBULAR PARA 3 IS FOUND IN REFTEL (B), PARA 5. THE UNACCEPTABLE G-77 OFFER OF COMPROMISE LANGUAGE FOR PREAMBULAR PARA 3 IS THE TEXT IN A/AC.180/9/ADD. 1 WITH ALL BRACKETS REMOVED, THUS CONFIDENTIAL

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ACCEPTING THE GROU B PROPOSAL TO ADD THE WORD "GENERALLY" (A GROUP B PROPOSAL IN WHICH THE U.S. DID NOT JOIN) PLUS USING SMALL INITIAL CAPS FOR NIEO. DELEGATION REQUESTS DEPT. REACTION TO THE FOLLOWING BRIDGING LANGUAGE BETWEEN G-77 LANGUAGE, "MINDFUL OF THE PRINCIPLES ENUNCIATED AND GENERALLY ACCEPTED," AND THE GROUP B LANGUAGE, "MINDFUL OF THE BROAD OBJECTIVES". POSSIBLE BRIDGING LANGUAGE EMERGING FROM NEGOTIATIONS MIGHT BE ALONG LINES : "MINDFUL OF THE OBJECTIVES INTENDED TO BE ACHIEVED BY THE PRINCIPLES CONTAINED IN" OR "MINDFUL OF THE RESULTS INTENDED TO BE ACCOMPLISHED BY THE PRINCIPLES CONTAINED IN". THE TEXT OF PREAMBULAR PARA 3 WOULD CONCLUDE AFTER THIS BRIDGING LANGUAGE WITH LANGUAGE OF GROUP B OFFER: "THE RESOLUTION OF THE SIXTH SPECIAL SESSION OF THE GENERAL ASSEMBLY ON THE ESTABLISHMENT OF A NEW INTERNATIONAL ECONOMIC ORDER, OF THE UNIDO SECOND GENERAL CONFERENCE'S LIMA DECLARATION AND PLAN OF ACTION, OF THE CHARTER OF ECONOMIC RIGHTS AND DUTIES

OF STATES, AND OF THE RESOLUTION OF THE SEVENTH SPECIAL SESSION OF THE GENERAL ASSEMBLY". WHILE USDEL CONSIDERS THAT SUCH BRIDGING LANGUAGE SPELLS OUT WHAT WAS MEANT BY U.S. WORDS "BROAD OBJECTIVES," USDEL WILL NOT ENTER NEGOTIATION OF SUCH LANGUAGE WITHOUT DEPT. INSTRUCTION ON LEGAL MEANING AND ITS CONSISTENCY WITH PAST AND EMERGING POLICY IN OTHER FORA.

5. PREAMBULAR PARA 10. THE GROUP B PROPOSAL FOR PREAMBULAR PARAGRAPH 10 (REFTEL B, PARA 5) IS DELETION OF THE WORDS "GUIDED BY THE ABOVE CONSIDERATIONS". THE UNACCEPTABLE GROUP D PROPOSAL ESPOUSED BY G-77 IS "GUIDED BY THESE PRINCIPLES AND GOALS." GROUP D HAS PRIVATELY PROPOSED TO USDEL THE FORMULATION, "IN THE LIGHT OF THESE GUIDELINES." DEL PROVIDES THIS TEXT FOR DEPARTMENT CONSIDERATION BUT DOES NOT RECOMMEND IT BECAUSE OF THE USAGE OF THE WORD "GUIDELINES" IN ARTICLE 28 OF THE LIMA CONFIDENTIAL

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DECLARATION TO ENCOMPASS UNACCEPTABLE PORTIONS OF THE LIMA DECLARATION.

6. SUBSEQUENT TO DRAFTING OF ABOVE PORTION THIS CABLE, CHAIRMAN OF G-77 (NIGERIA) IN CONTACT GROUP MEETING AT WHICH REPORT OF AD HOC DRAFTING GROUP WAS PRESENTED ASSERTED FLATLY THAT G-77 CONSIDERS QUESTION OF ARTICLE 2 CHAPEAU LINK BETWEEN PREAMBLE AND BODY OF CONSTITUTION TO BE THE MAJOR PROBLEM IN THE AD HOC DRAFTING GROUP AND G-77 CONSIDERS IT TO BE A LEGAL PROBLEM BUT A PROBLEM REQUIRING POLITICAL DECISION. IN THE LIGHT OF THIS STATEMENT AND POLITICAL PRESSURES ON GROUP B EITHER AT IGC-V OR A PLENIPOTENTIARY MEETING WHICH IT FORESHADOWS, U.S. DEL ALSO REQUESTS BY MARCH 18 ANY LEGAL ARGUMENTS AGAINST LINK WHICH DEPT WOULD WISH IT TO USE AND DEPT. GUIDANCE ON HOW VIGOROUSLY TO PRESS LEGAL NATURE OF ISSUE. (THIS HAS BEEN THE GROUND ON WHICH US DEL HAS ARGUED THE QUESTION THUS FAR.) DISCUSSION WHICH HAS ALREADY TAKEN PLACE WITHIN GROUP B (REFTEL A,) HAS CONCERNED THE WAY IN WHICH AN INTERNATIONAL TRIBUNAL WOULD INTERPRET THE PREAMBLE WITH OR WITHOUT A LINK TO THE BODY OF THE CONSTITUTION. STIBRAVY

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